

ENTERED

FILED

JAN 20 2005

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

JAN 21 2005

**U.S. DISTRICT COURT
CLARKSBURG, WV 26301**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 1:05CR4

DANIEL TESTERMAN,

Defendant.

INITIAL SCHEDULING ORDER

On the 20th day of January, 2005, came the United States of America by Sherry L. Muncy, Assistant United States Attorney, and also came the defendant, Daniel Testerman, in person, and by his counsel, George Cosenza, for arraignment in the above-styled criminal action. Whereupon the Magistrate Judge, in open court, determined that the defendant had received a copy of the Indictment stating to the defendant the substance of the charge. The Magistrate Judge summarized the Indictment to the defendant and not guilty pleas to the charges contained therein were entered. In accordance with the Local Rules of Criminal Procedure (LR Cr P), it is

ORDERED that:

(1) The United States Attorney shall provide the defendant's counsel with copies of pretrial discovery and inspection on or before January 27, 2005. LR Cr P 16.01.

(2) The Court then inquired of defendant whether he refused discovery from the government. Defendant advised the Court he did not refuse discovery from the government. In accord with Local Criminal Rule 16.01, defendant shall provide reciprocal discovery in accord with Fed. R. Crim. P.

4

16(b)(1) within 14 days of receipt of the government's discovery, but not later than **February 10, 2005**.

Any declination of disclosure, additional discovery or inspection and additional evidence shall be in accordance with LR Cr P 16.01.

(3) Exculpatory evidence shall be disclosed on or before **January 27, 2005**. LR Cr P 16.05.

(4) All motions, including any motion for a bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure and LR Cr P 47.01, shall be filed on or before **February 7, 2005**. All such motions shall contain or be accompanied by a memorandum or brief presented at the time of filing setting forth the reasons and legal support for granting such motion. If this memorandum or brief is not presented at the time of filing, the motion will be dismissed.

(5) Responses to all such motions with legal support or memorandum shall be filed on or before **February 17, 2005**.

(6) A hearing on all motions, if referred to the Magistrate Judge by the Court, shall be held by the Magistrate Judge on **Wednesday, February 23, 2005, at 11:00 a.m.** at Clarksburg, West Virginia. If any of the pretrial motions require the taking of testimony, the party offering the testimony shall notify the Magistrate Judge's office seven (7) days prior to the hearing to obtain a court reporter for the hearing. The defendant shall be present at the hearing on all pretrial motions. The United States Marshals Service requires that subpoenas for witnesses be issued ten days prior to the date of the hearing in order for them to be able to serve them.

(7) Rule 404(b), Giglio, and Roviaro evidence shall be disclosed on or before **March 14, 2005**. LR Cr P 16.06.

(8) It is requested that the government disclose materials described in 18 U.S.C. § 3500 (Jencks Act material) on or before **March 14, 2005**. LR Cr P 16.07.

(9) All proposed voir dire questions and proposed jury instructions shall be submitted by counsel to the Court and opposing counsel on or before **5:00 p.m., March 21, 2005**. LR Cr P 24.01/30.01.

(10) All motions in limine (which must be limited to matters actually in dispute) shall be submitted by counsel to the Court and opposing counsel at least one working day before the pretrial conference.

If the instructions in this case are being typed on a computer, counsel are requested to provide to the court a disk labeled as to the case name and party proposing the instructions. The envelope containing the disk should be marked "Contains Disk--Do Not X-Ray--May be Opened for Inspection." The disk will be returned to counsel if requested. LR Cr P 24.01.

(11) By **5:00 p.m., March 14, 2005**, counsel for each party shall submit to the Court a list of probable witnesses and possible witnesses (identified as such), but not whether or not the defendant shall be a witness. The list shall state the full name and address of each witness and shall also contain a brief statement of the subject matter to be covered by each witness. Expert witnesses and record custodians shall be identified as such on the list. After the Court has received the witness lists from all parties, they shall be provided to opposing counsel. LR Cr P 16.08.

(12) By **5:00 p.m., March 14, 2005**, counsel for each party shall file with the Court and with opposing counsel a list of exhibits to be offered at trial. In addition, counsel for each party shall number the listed exhibits with evidence tags which may be obtained from the clerk and shall

exchange a complete set of marked exhibits with opposing counsel (except for large or voluminous items or other exhibits that cannot be reproduced easily). LR Cr P 16.09.

(13) If this matter results in the formulation of a plea agreement, counsel shall submit to the Court the executed plea agreement or an unexecuted final proposed agreement by **5:00 p.m., March 21, 2005.**

If a party believes that there may be a disputed issue on the admissibility of certain evidence at trial, that party's counsel shall file a memorandum of law on that issue, with a copy served upon opposing counsel, **at least 48 hours prior to trial.**

The deadlines stated in LR Cr P 24.01/30.01, 16.08 and 16.09 are deadlines for hand-delivery or delivery by FAX. If the items required to be served on opposing counsel are served by mail, the deadline shall be two (2) days earlier.

(14) A pretrial conference in this case will be held before the Honorable Irene M. Keeley on **March 22, 2005, at 12:15 p.m.**

(15) Jury selection in this matter will be conducted before the Court at the following time and place:

United States Post Office and Federal Building
500 West Pike Street
Clarksburg, WV 26301

March 28, 2005, at 9:30 a.m.

(16) Trial will commence upon completion of jury selection in all cases scheduled for trial.

As of this date, this case is set for trial as the **first** case.

(17) Defendant shall appear at every scheduled matter including, but not limited to, motions hearing, pretrial conference, trial and every other proceeding.

It is further ORDERED that defendant be released pursuant to the terms and conditions set in the Order Setting Conditions of Release.

The Clerk of the United States District Court for the Northern District of West Virginia is directed to provide copies of this order to all counsel of record.

DATED: January 20, 2005.



JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE